

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Petition for Declaratory Ruling that AT&T's)
Phone-to-Phone IP Telephony Services are)
Exempt from Access Charges)

WC Docket No. 02-361

INITIAL COMMENTS OF
MINNESOTA INDEPENDENT COALITION

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December 18, 2002

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The Minnesota Independent Coalition ("MIC") respectfully submits the following Initial Comments in response to the Commission's Public Notice dated November 18, 2002. The members of the MIC are all "rural telephone companies"¹ providing local exchange service in the State of Minnesota. The MIC opposes the Petition of AT&T for the reasons set forth below.

SUMMARY

The Commission should deny AT&T's petition for a declaratory ruling that its phone-to-phone IP telephone services are exempt from payment of access charges. AT&T's petition should be denied for several reasons. First, this record makes it clear that AT&T's phone-to-phone IP telephony services are interstate interexchange "telecommunications services."² AT&T has merely changed the technology it uses to provide a portion of its standard services, and customers of AT&T's phone-to-phone IP telephony obtain virtually the same interstate

¹ 47 U.S.C. § 153(37).

² 47 U.S.C. § 153(46).

interexchange services as any other customers. Under the Commission's rules, and consistent with the principle of technological neutrality, AT&T is required to pay interstate access charges for services obtained from Local Exchange Carriers ("LECs") irrespective of the technology AT&T uses within its network.

Second, AT&T's assertion of the efficiency advantages of IP telephony is fundamentally inconsistent with claim that it will not deploy this more efficient technology unless it receives an "affirmative economic savings"³ (discriminatory exemption from access charges). If IP telephone is more efficient, a discriminatory advantage should not be needed. Further, the claimed need for such an "affirmative economic advantage"⁴ is particularly suspect when made by the owner of the "nation's largest circuit switched long distance network."⁵

Third, AT&T's petition should also be denied because it requests a piecemeal resolution of issues relating to intercarrier compensation that should be addressed in the context of the Commission's broader inquiry into intercarrier compensation. Certainly, AT&T has not provided either an adequate legal or factual basis for the permanent discriminatory advantage that AT&T seeks.

DISCUSSION

I. AT&T'S PHONE-TO-PHONE IP TELEPHONY SERVICES ARE "TELECOMMUNICATIONS SERVICES."

The Commission's 1998 *Universal Service Report*⁶ discussed the characteristics of "phone-to-phone IP telephony" in the context of both the characteristics of the provider and the

³ AT&T Petition at pp. 17-18.

⁴ Id.

⁵ AT&T Petition at p. 17.

⁶ Federal-State Joint Board on Universal Service, Report to Congress, 13 FCC Rcd. 11, 501 (1998) ("*Universal Service Report*").

features of the service⁷ and further noted that the record in that proceeding “suggests” that phone-to-phone IP telephony had the “characteristics of ‘telecommunications services’”⁸ In the *Universal Service Report*, the Commission noted that in future proceedings “with more focused records, we will undoubtedly be addressing the regulatory status of various forms of IP telephony, including the regulatory requirements to which phone-to-phone providers may be subject if we were to conclude that they are ‘telecommunications carriers.’”⁹

In this proceeding, AT&T has described the specific characteristics of its phone-to-phone IP telephony services¹⁰ and further acknowledged that, except for certain enhanced services, “the balance of the traffic that uses this IP transmission arrangement consists of both interstate and intrastate ‘phone-to-phone IP telephony services’ within the *Universal Service Report*’s definition of that term.”¹¹ The more focused record in this proceeding *confirms* for AT&T’s phone-to-phone IP telephony services what was *suggested* by the record in the *Universal Service Report*. AT&T’s phone-to-phone IP telephony service *is* a “telecommunications service.” As a result, both the principle of technological neutrality and the Commission’s rules¹² require that AT&T pay access charges to LECs for the services provided by the LECs

II. THE POSSIBLE GREATER EFFICIENCIES OF IP TELEPHONY DO NOT REQUIRE OR JUSTIFY DISCRIMINATORY ADVANTAGES.

AT&T asserts that IP networks “can produce enormous efficiencies by allowing the integrated provision of an array of voice, data and enhanced services. (Citation omitted.)”¹³ AT&T also asserts that it “requires affirmative economic savings before it can justify making

⁷ *Id.* at ¶ 88.

⁸ *Id.* at ¶ 89.

⁹ *Id.*

¹⁰ AT&T Petition at p. 18.

¹¹ *Id.* at p. 19.

¹² *Universal Service Report* at ¶ 91.

¹³ AT&T Petition at p. 10.

investments that would allow it to begin even to transition ordinary voice traffic to IP.”¹⁴ These two claims are fundamentally inconsistent.

AT&T in effect says that it requires “affirmative economic savings” which AT&T equates to a discriminatory exemption from access charges. However, if AT&T’s IP telephony is truly a more efficient technology, AT&T should not require a discriminatory advantage as an inducement to implement that more efficient technology. AT&T’s claim of a need for a discriminatory advantage is all the more incongruous when made by the admitted by the owner of the “nation’s largest circuit switched long distance network.”¹⁵

Finally, AT&T states that “in response to the Commission *de jure* and *de facto* exemptions of phone-to-phone IP telephony from access charges and in recognition of IP’s future potential, AT&T has undertaken to use its common Internet backbone”¹⁶ to provide phone-to-phone IP telephony. The inference is that AT&T has relied on favorable regulatory treatment and that its reliance requires continuation of those exemptions. No party could be more aware than AT&T of the evolving and unsettled nature of these issues. As a result, any reliance by AT&T on continuation of these exemptions does not merit any weight by the Commission.

III. AT&T’S REQUEST FOR A PIECEMEAL AND PREMATURE DECLARATION OF EXEMPTION SHOULD BE DENIED.

The *Universal Service Report* recognized that in future proceedings the Commission “likely will face difficult and contested issues relating to the assessment of access charges on

¹⁴ *Id.* at pp. 17-18.

¹⁵ *Id.* at p. 17.

¹⁶ *Id.* at p.18.

these providers.”¹⁷ AT&T’s request is based, at least in part, on a patent request for a discriminatory advantage, an exemption from access charges on the basis of the use of a new technology. However, AT&T has not presented a factual basis to make permanent a discriminatory advantage involving inter-carrier compensation, particularly when the Commission has pending a broad scale inquiry of that subject. Contrary to AT&T’s request, such issues should not be resolved piecemeal, but rather should be resolved as part of the Commission’s broader investigation.

AT&T has also failed to make provide a legal basis for its request. AT&T argues that imposing access charges on its phone-to-phone IP services would be “flatly contrary” to Congress’ intent as expressed in Section 230(b)(2).¹⁸ However, Section 230 is addressed to internet content, including provisions for blocking and screening of content, not the application of access charges to phone-to-phone IP telephony. AT&T also relies on the Eighth Circuit’s decision upholding the Commission’s permanent exemption of ISPs from access charges.¹⁹ However, that decision was based on the fact that ISPs “do not utilize LEC services and facilities in the same way or for the same purposes as other customers who are assessed per-minute interstate access charges.”²⁰ The opposite is true with respect to AT&T’s phone-to-phone IP telephony service. Finally, as previously discussed, the *Universal Service Report* does not support AT&T’s position. Rather, the factors identified in that decision lead to the conclusion that AT&T’s phone-to-phone IP telephony service is a “telecommunications service.”

¹⁷ *Id.*

¹⁸ *Id.* at p. 25.

¹⁹ *Id.* at p. 8.

²⁰ *Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523, 542 (8th Cir. 1998).

IV. CONCLUSION.

For the reasons set forth above, the Commission should deny AT&T's Petition for a declaratory ruling.

Dated: December 18, 2002.

Respectfully submitted,

MOSS & BARNETT
A Professional Association

/s/ Richard J. Johnson

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CERTIFICATE OF SERVICE

I, Kim R. Manney, hereby certify that on the 18th day of December, 2002, a copy of the Initial Comments by the Minnesota Independent Coalition was sent by first class United States mail, postage prepaid, to those listed on the attached list.

By: /s/ Kim R. Manney
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SERVICE LIST

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